

**BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION**

IN RE: Barbara P. Keathley )  
Ward 028, Block 040, Parcel 00045 ) Shelby County  
Residential Property )  
Tax Year 2005 )

### INITIAL DECISION AND ORDER

## Statement of the Case

The subject property is presently valued as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$58,300	\$326,000	\$384,300	\$96,075

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on June 7, 2006 in Memphis, Tennessee. In attendance at the hearing were Roy Keathley, Esq. and Shelby County Property Assessor's representative Jonathan Jackson.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a single family residence located at 22 East Parkway, South in Memphis, Tennessee. Subject residence was constructed in 1940 and contains approximately 3,367 square feet of total living area.

The taxpayer contended that subject property should be valued at \$308,300. In support of this position, the taxpayer argued that subject property experiences a significant diminution in value due to three problems which were concisely summarized by the taxpayer as follows:<sup>1</sup>

1. Lindenwood Christian Church is located on the land south and east of the subject property. The multi story (approximately 50ft higher than the property) recreation building of the Church is located on the rear property line of the property.
2. The off ramp from Union Ave going North on East Parkway materially restricts the ingress and egress to the property and at times creates a dangerous traffic condition in entering the drive of the property. The condition has become worse in recent years due to the increased traffic from Union Ave going to the expressway that in the last few years was extended to East Parkway.
3. The city storm drain and sewer at this location are combined and old and at times of heavy rain may cause a back flow through the sewer line of the property to flood the basement of the house. This has occurred nearly every year for the past 35 years (and perhaps longer). The city is aware of the problem but

<sup>1</sup> See the attachment to the appeal form in response to question #16.



has no immediate plans that is known to the owner to correct this condition.

The taxpayer asserted that two factors support a value of \$308,300. First, such a value represents a \$25,900 increase in value from 2004 and is consistent with the value recommended by the hearing officer for the Shelby County Board of Equalization.<sup>2</sup> Second, the taxpayer introduced sales data compiled by Zillow.com which estimated subject property's value at \$315,977.

The assessor contended that subject property should remain valued at \$384,300. In support of this position, five (5) comparable sales were introduced into evidence. Mr. Jackson maintained that any factors causing a diminution in value have been accounted for as the comparable sales support value indications ranging from \$280,000-\$495,000.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should remain valued at \$384,300 based upon the presumption of correctness attaching to the decision of the Shelby County Board of Equalization.

Since the taxpayer is appealing from the determination of the Shelby County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

The administrative judge finds merely reciting factors that could cause a diminution in value does not establish the current appraisal exceeds market value. The administrative judge finds the Assessment Appeals Commission has ruled on numerous occasions that one must *quantify* the loss in value one contends has not been adequately considered. See, e.g., *Fred & Ann Ruth Honeycutt* (Carter Co., Tax Year 1995) wherein the Assessment Appeals Commission ruled that the taxpayer introduced insufficient evidence to quantify the loss in value from the stigma associated with a gasoline spill. The Commission stated in pertinent part as follows:

The assessor conceded that the gasoline spill affected the value of the property, but he asserted that his valuation already reflects a deduction of 15% for the effects of the spill. . . . The administrative judge rejected Mr. Honeycutt's claim for an additional reduction in the taxable value, noting that he had not produced evidence by which to quantify the effect of the "stigma." The Commission finds itself in the same position. . . .

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<sup>2</sup> Shelby County underwent a countywide reappraisal in 2005. Shelby County was last reappraised in 2001. Subject property was appraised at \$282,400 from 2001-2004.



Conceding that the marketability of a property may be affected by contamination of a neighboring property, we must have proof that allows us to quantify the loss in value, such as sales of comparable properties. . . Absent this proof here we must accept as sufficient, the assessor's attempts to reflect environmental condition in the present value of the property.

Final Decision and Order at 1-2. Similarly, in *Kenneth R. and Rebecca L. Adams* (Shelby Co., Tax Year 1998) the Commission ruled in relevant part as follows:

The taxpayer also claimed that the land value set by the assessing authorities. . . was too high. In support of that position, she claimed that. . . the use of surrounding property detracted from the value of their property. . . . As to the assertion the use of properties has a detrimental effect on the value of the subject property, that assertion, without some valid method of quantifying the same, is meaningless.

Final Decision and Order at 2.

The administrative judge finds that the value recommendation by a hearing examiner has no probative value for at least two reasons. First, the full Shelby County Board of Equalization declined to accept the recommendation. Second, it is unclear how he or she arrived at her proposed value.

The administrative judge finds that the sales information from the website Zillow.com also lacks probative value. The administrative judge finds that it is unclear how the estimated value of \$315,977 was determined and nobody was obviously present to testify or undergo cross-examination. The administrative judge finds that the State Board of Equalization typically refuses to consider full-blown appraisal reports when the appraiser is not present. See, e.g., *TRW Koyo* (Monroe Co., Tax Years 1992-1994) wherein the Assessment Appeals Commission ruled in pertinent part as follows:

The taxpayer's representative offered into evidence an appraisal of the subject property prepared by Hop Bailey Co. Because the person who prepared the appraisal was not present to testify and be subject to cross-examination, the appraisal was marked as an exhibit for identification purposes only. . . .

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. . . The commission also finds that because the person who prepared the written appraisal was not present to testify and be subject to cross-examination, the written report cannot be considered for evidentiary purposes. . . .

Final Decision and Order at 2.

The administrative judge would also note that although the website lists five comparable sales, the sales cannot provide a basis of valuation for at least two reasons. First, the sales all occurred after the relevant assessment date of January 1, 2005 and are



technically irrelevant.<sup>3</sup> See *Acme Boot Company and Ashland City Industrial Corporation* (Cheatham County - Tax Year 1989) wherein the Assessment Appeals Commission ruled that “[e]vents occurring after [the assessment] date are not relevant unless offered for the limited purpose of showing that assumptions reasonably made on or before the assessment date have been borne out by subsequent events.” Final Decision and Order at 3. Second, the comparable sales were not adjusted. See *E.B. Kissell, Jr.* (Shelby County, Tax Years 1991 and 1992) wherein the Assessment Appeals Commission ruled in pertinent part as follows:

The rate of increase in the assessment of the subject property since the last reappraisal or even last year may be alarming but is not evidence that the value is wrong. It is conceivable that values may change dramatically for some properties, even over so short of time as a year. . .

The best evidence of the present value of a residential property is generally sales of properties comparable to the subject, comparable in features relevant to value. Perfect comparability is not required, but relevant differences should be explained and accounted for by reasonable adjustments. If evidence of a sale is presented without the required analysis of comparability, it is difficult or impossible for us to use the sale as an indicator of value. . . .

Final Decision and Order at 2. The administrative judge finds that the procedure typically followed in the sales comparison approach has been summarized in one authoritative text as follows:

To apply the sales comparison approach, an appraiser follows a systematic procedure.

1. Research the competitive market for information on sales transactions, listings, and offers to purchase or sell involving properties that are similar to the subject property in terms of characteristics such as property type, date of sale, size, physical condition, location, and land use constraints. The goal is to find a set of comparable sales as similar as possible to the subject property.
2. Verify the information by confirming that the data obtained is factually accurate and that the transactions reflect arm’s-length, market considerations. Verification may elicit additional information about the market.
3. Select relevant units of comparison (e.g., price per acre, price per square foot, price per front foot) and develop a comparative analysis for each unit. The goal here is to define and identify a unit of comparison that explains market behavior.
4. Look for differences between the comparable sale properties and the subject property using the elements of comparison. Then *adjust the price*

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<sup>3</sup> January 1, 2005 constitutes the relevant assessment date pursuant to Tenn. Code Ann. § 67-5-504(a).



*of each sale property to reflect how it differs from the subject property or eliminate that property as a comparable. This step typically involves using the most comparable sale properties and then adjusting for any remaining differences.*

5. Reconcile the various value indications produced from the analysis of comparables into a single value indication or a range of values.

[Emphasis supplied]

Appraisal Institute, *The Appraisal of Real Estate* at 422 (12<sup>th</sup> ed. 2001).

Based upon the foregoing, the administrative judge finds that the current appraisal of \$384,300 must be affirmed based upon the presumption of correctness attaching to the decision of the Shelby County Board of Equalization. The administrative judge recognizes that additional proof from the taxpayer could very well support a reduction in value. Absent such evidence, however, the administrative judge finds that any adjustment in value would be wholly arbitrary.

#### ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2005:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$58,300	\$326,000	\$384,300	\$96,075

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which

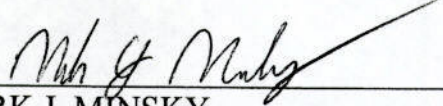


relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or

3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 22nd day of June, 2006.

  
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MARK J. MINSKY  
ADMINISTRATIVE JUDGE  
TENNESSEE DEPARTMENT OF STATE  
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. Roy Keathley  
Tameaka Stanton-Riley, Appeals Manager